

PCLL EDUCATION IN HONG KONG AND THE QUESTION OF PUBLIC FUNDING

In an interview with the press on 1 March 2000, Dr Alice Lam, Chairperson of the University Grants Committee (UGC), revealed that the UGC is planning to withdraw funding support for certain taught postgraduate programmes including the MBA and the PCLL (Postgraduate Certificate in Laws), on the ground that they produce 'high productivity value' for the students concerned or such programmes do not fall into areas which the government wants to promote (e.g. information technology) or in which there exists a special social need (e.g. medicine).¹

This paper considers the implications of this proposal as far as it relates to the PCLL programme operated by the University of Hong Kong, examines whether the proposal can be justified, and sets out the position of the Faculty of Law at HKU on this matter.

The PCLL Programme

The PCLL programme is a one year course for students who hold the LLB (Bachelor of Laws) degree or its equivalent who want to join the legal profession in Hong Kong. It receives statutory recognition under the Legal Practitioners Ordinance as a prerequisite for entry into the legal profession in Hong Kong². Students who complete their LLB in Hong Kong cannot start work as a trainee solicitor (leading to admission as a solicitor after two years' work)-or a pupil (leading to the full right to practise as a barrister after one year's work) until and unless they have obtained the PCLL³. For intending lawyers, therefore, the PCLL is the fourth year of their legal education at university which begins with the first year of LLB study.

For students who do not intend to become lawyers and who study law as a means of liberal education, the LLB degree is self-sufficient and they can enter the job market after three years (when they graduate) in occupations other than the legal profession. However, for students who intend to join the legal profession (and they have always constituted the overwhelming majority of

¹ See various Hong Kong newspapers published on 2 March 2000.

² Certain exceptions exist where entry into the Hong Kong legal profession is based on overseas legal qualifications.

³ See rule 7, Trainee Solicitors Rules; section 27, Legal Practitioners Ordinance, Cap 159, Laws of Hong Kong.

LLB students in Hong Kong)⁴, the PCLL is the fourth year of their university education without which their legal education would be incomplete. Indeed, the PCLL programme as it stands is an integral part of a 4-year package for the purpose of training lawyers in Hong Kong.

Given the professional orientation of legal education, a 3-year course is inadequate to prepare graduates for legal practice. In this regard, the training of lawyers shares similar features with the training of doctors (which requires a 5-year course leading to the MBBS), dentists (which requires a 5-year course leading to the Bachelor of Dental Surgery) and architects (which is based on a 5-year package leading to the M Arch). In all these cases, it is recognized that University education for such professionals should take more than the norm of 3 years (for ordinary degrees such as the BA, BSc or BSocSc).

The division of the curriculum into the LLB and the PCLL is in many ways artificial and a result of historical contingency when the programmes were first introduced nearly 30 years ago. For example, tax law is taught in some bachelor programmes for business and accountancy, but is not taught in the LLB and is left to the PCLL. This is because the PCLL course has been designed as an integral part of a 4-year package. There are other courses in the PCLL which are similar to LLB courses in terms of teaching methodology, nature of teaching content and examination method, and these courses find themselves in the PCLL and not in the LLB simply because it is not possible to accommodate them in the 3-year LLB curriculum. Examples are the law relating to conveyancing, various aspects of commercial law, the law relating to criminal procedure and civil procedure.

The existing system for funding the PCLL

The PCLL at the University of Hong Kong is taught by the Department of Professional Legal Education (DoPLE) in the Faculty of Law. The main teaching responsibility of this Department relates to the PCLL, although it also contributes to the teaching of LLM (Master of Law) courses and LLB (Bachelor of Laws) courses, both primarily taught by teachers in the Department of Law.

The tuition fee currently payable by PCLL students is the same as the tuition fee for all undergraduates and taught postgraduate programmes funded by the

⁴For example, in 1999, 144 students graduated from the LLB programme, and 137 among them were admitted into the PCLL.

UGC. It is at the level of \$42,000. DoPLE receives UGC funding through the system of allocation of funds by the University to its faculties and departments. It has been estimated by the UGC that the average student unit cost for law students at HKU is \$212,000 per year. This is in fact the *lowest* student unit cost among the student unit costs for different disciplines at HKU (for example, the unit cost for social sciences is \$231,000, for humanities is \$309,000, and that for medicine is \$546,000).

In addition to the students in the UGC-funded programme, DoPLE also teaches students in the PCLL programme administered by the School of Continuing and Professional Education (SPACE) of HKU. There are currently over 100 students in the SPACE programme. They pay the tuition fee of \$104,000 per year. The tuition fee income is split between SPACE, DoPLE and the University. DoPLE uses its share of the income to employ part-time teachers to conduct small group tutorials for the additional number of students. However, the lectures (for the combined class of UGC-funded and SPACE PCLL students) in all the PCLL subjects are conducted by full-time academics employed under the UGC-funded budget of the Department. The tuition fee charged by SPACE reflects therefore the *marginal cost* of teaching offered to additional students by an academic department of the University whose staff are entirely funded by the UGC.

The demand for PCLL places

The PCLL course has experienced a considerable increase in demand for its places during the past two years from Hong Kong students who have graduated from overseas universities. Much of this demand has been occasioned by the removal of the 'English route' to qualification as a solicitor in Hong Kong. Many of these applications are from well-qualified candidates from prestigious universities whose admission to the PCLL and thus entry to the legal profession in Hong Kong enhance the quality of the profession.

It has been proposed in the Legal Practitioners (Amendment) Bill 1999 that the right of UK barristers to be automatically admitted in Hong Kong should be removed. This is expected to enhance further the demand for PCLL places in Hong Kong, because Hong Kong students studying law in the UK who would otherwise take the English bar examination before returning to Hong Kong to practise will in future (after the Bill is passed and comes into effect) have to return to Hong Kong (after completing their LLB education in the UK) to do the PCLL. Indeed, the bills committee studying this bill has recently written to the two local universities with law schools to seek confirmation that the

universities are able to cope with the increased demand for PCLL places arising from the enactment of this bill.

DoPLE as an academic department in the University

As in the case of the teaching staff of all academic departments in the University, full-time teachers in DoPLE have, in addition to teaching duties, the responsibility to engage in scholarly research. The research output of the Faculty as a cost centre (to which DoPLE contributes its due share) has been assessed by the UGC in its Research Assessment Exercise and given a high score relative to most other cost centres. The research output of DoPLE includes leading texts on various areas of Hong Kong law (e.g. land law and conveyancing, civil procedure, revenue law, insolvency law, inheritance law, construction law, etc.) which are widely used by legal practitioners in Hong Kong, as well as articles in local and international journals and textbooks for use by Hong Kong law students.

The academic staff in DoPLE participate and contribute to the wider academic activities of the Faculty, for example, to the editing of the *Hong Kong Law Journal*, the continuing legal education programme and to the organization of seminars and conferences. They also play a full part in the administrative duties and functions of the Faculty and of the University by assuming posts of responsibility (such as Associate Dean) and as members of University and Faculty committees and working groups.

Teachers of DoPLE also participate actively in community service, particularly in law-related bodies. Some of them serve as members of various sub-committees of the Law Society and of the Law Reform Commission.

The financial implications of the withdrawal of UGC funding

It is not easy to assess accurately at this stage the full financial implications of the proposed withdrawal of UGC funding for the PCLL programme. A detailed proposal has not been made at this stage. We anticipate that if it is made, it will provide for phased implementation in the coming triennium 2001-04.

It is however possible to provide a rough estimate of such financial implications on the basis of some assumptions. For the purpose of our calculations, we assume that the existing staff and student numbers remain unchanged. We also assume that the University as a whole is willing to absorb

the major portion of the part of the student unit cost that is not attributable to the basic staff costs of DoPLE --- the University will only take 20% of the tuition fee income as compensation for all the services and facilities provided to the students centrally, and 80% of the income goes to DoPLE to enable it to pay its staff.

On the basis of these assumptions, Appendix A shows that the estimated tuition fee (at present cost levels) for a non-UGC-funded PCLL programme for 170 students (the current number of UGC-funded PCLL students) will be \$176,261. Appendix B provides an alternative scenario based on the present experience of the SPACE PCLL programme. It shows that by increasing the student intake to 335 and relying on the principle of decreasing marginal cost, the tuition fee can be brought down to \$106,132. However, it should be stressed that the scenario provided in Appendix B is actually *unrealistic* since it is unlikely that the demand for PCLL places will remain so strong indefinitely that as many as 335 places can be filled year after year with highly qualified students.

Relevant considerations

We understand at a time of financial difficulties, it is necessary for Government to find ways of achieving savings. The question for this paper is whether achieving savings by withdrawing UGC funding for the PCLL is justified. We believe that the following are relevant considerations in this regard.

- (1) The first consideration is, of course, whether students will be able to afford the higher tuition fee of a non-UGC-funded PCLL programme. The above estimate suggests that the higher tuition fee will probably make it difficult for many academically well-qualified students to move on from the LLB to the PCLL and thus prepare themselves academically for a career in the legal profession.⁵ *It is clearly undesirable and against the public interest for future entry to the legal profession to be limited to persons from wealthy family backgrounds.*
- (2) It may be suggested that the PCLL programme will so substantially enhance the graduates' earning capacity (the 'high productivity value'

⁵ According to a survey conducted by HKU's Office of Student Affairs on first year undergraduate students in 1998-99, 53% of law students came from families with a monthly household income of less than \$25,000, and 25% of law students came from families with a monthly household income of less than \$15,000. In 1999-2000, among the 185 students in the UGC-funded PCLL programme of the Faculty of Law, 81 students (i.e. 44%) had received grants and loans under the government's financial assistance schemes for students.

argument) that even if the tuition fee is high, students should be prepared to borrow money to pay for it. However, it should be noted in this regard that even after completion of the PCLL, intending barristers still have to do one year of pupillage during which they will not receive any salary. In the case of intending solicitors, completion of the PCLL only qualifies them to start work as trainee solicitors, and they do not become qualified to practise as solicitors until they complete two years of work as trainee solicitors.

- (3) There is evidence that the salary for trainee solicitors has been declining in recent years as a result of the operation of market forces. This demonstrates that whether PCLL graduates have a high earning capacity relative to other graduates depends very much on the contingent outcome of the interaction of the forces of supply and demand. It should not be easily assumed that PCLL holders will have a better prospect of earning higher incomes than other graduates.
- (4) It should also be noted that relative to other common law and neighbouring jurisdictions, legal fees charged by experienced and reputable lawyers are still expensive in Hong Kong. The large middle class still finds it difficult to afford legal services for purposes other than the simplest conveyancing or succession matters. It may be expected that with the increase in the supply for lawyers, legal fees will gradually come down. This will be in the public interest, but this also suggests that the earning capacity of PCLL graduates will decrease in the course of time.
- (5) The question of the demand for and supply of lawyers in Hong Kong is still a subject of pure speculation in the absence of real research and concrete evidence. Compared to other common law jurisdictions, Hong Kong has the lowest ratio of lawyers to population.⁶ Recently, the Law Society of Hong Kong has obtained government funding to conduct a comprehensive review of legal education in Hong Kong. The review is now in progress and is coordinated by a Steering Committee chaired by the Solicitor General. The review will look into, among other things, the future manpower needs in the legal profession in Hong Kong. The findings and recommendations from the review exercise will contribute much to the future planning for legal education in Hong Kong. *It is*

⁶The ratios of lawyers to population in the following jurisdictions are as follows: 1:1335 (Hong Kong); 1:912 (Singapore); 1:756 (UK); 1:729 (Canada); 1:533 (Australia); 1:300 (USA).

strongly urged that any fundamental change in the system for funding legal education in Hong Kong should not be introduced before the review is concluded.

- (6) One of the reasons for the review was a general concern about the possible decline of the *quality* of legal services in Hong Kong. One of the purposes of the review is to ensure that any future system for legal education in Hong Kong will be able to produce law graduates of world-class quality --- an important prerequisite for Hong Kong's continued success as an international financial and commercial centre. *In these circumstances, it is a matter of serious public concern whether the proposed reduction in public funding for legal education may render impossible any necessary improvement in the system for legal education.*
- (7) If the PCLL is to switch to a self-funded mode, it would be difficult to implement any reform of the course even if reform is recommended as a result of the review. In a situation of reduced funding where the very survival of DoPLE as an academic department of the University is threatened, any discussion of reform and improvement in the PCLL programme would simply be unrealistic. Indeed, it would already be very fortunate if the quality of the course can be maintained at its existing level.
- (8) Changing PCLL to a self-funded mode might actually lead to the collapse of DoPLE as an academic department within the University. As mentioned above, teachers in an academic department have both teaching and research responsibilities, and the stable environment made possible by UGC funding enables academics to devote themselves to research wholeheartedly as well as to contribute to community service. The excellent record of DoPLE in research and community service has been mentioned above. If PCLL teaching is to be commercialised (in the sense of it being financed entirely by tuition fee income), it may well turn out that the most efficient way of running the operation is for it to be provided by an institution like the School of Professional and Continuing Education of the University (which is an entirely self-financed and independent unit of the University). This would mean the end of the existence of DoPLE as an academic department, and the end of its contribution to legal scholarship and community service in Hong Kong. This would be a significant loss for the legal system and legal community in Hong Kong.

- (9) *The question of UGC funding for the PCLL is ultimately a question of how the Government sees its responsibility in ensuring the maintenance and development of the Rule of Law in Hong Kong, for the Rule of Law depends on the quality of legal practitioners (which in turn depends on the quality of legal education) as well as the quality of legal scholarship and research and the service of law professors in public bodies. If PCLL tuition fees are such that talented young people are deterred from entering the legal profession, the commercialisation of the PCLL course discourages necessary reform, and financial considerations lead to the PCLL being taught on a full-fee commercial basis without the necessary scholarly input and infrastructure provided by an academic department of the University, the price to be paid (in return for the 'savings' achieved by stopping funding to the cheapest discipline in university education) will be a deterioration in Hong Kong's legal system.*
- (10) Apparently the UGC intends to maintain public funding for university education in medicine and dentistry, even though they are many times more expensive than legal education and take more than four years (the combined length of the LLB and PCLL). We all want Hong Kong to continue to be well served by doctors and dentists, and we are happy to see the UGC's commitment to maintain high quality medical and dental services in Hong Kong. But is it equally committed to the maintenance of the Rule of Law in Hong Kong?
- (11) The comparison with medicine is highly relevant here⁷ In the case of medical education in the University, 5 years of university education are required after which the graduate can start his or her training in a hospital. In the case of legal education, it has been pointed out above that the PCLL is an integral part of a 4-year programme that provides comprehensive training for those who want to become trainee solicitors or pupils in barristers' chambers after the 4 years. The fact that there is the option of graduating with an LLB at the end of the third year and not proceeding to the 4th year does not mean that the LLB and PCLL are not so closely connected that they should be regarded as an integral whole.
- (12) In this regard, there is a crucial distinction between the PCLL and other taught postgraduate programmes in law such as the LLM (Master in Laws). The case for a switch to a self-funded mode in the LLM would be much stronger. The criterion of 'enhancement in personal productivity

⁷ A similar analogy may be drawn with dentistry and architecture.

value' that the UGC says should characterize self-funded programmes is much more appropriate to the LLM than it is to the PCLL. LLB graduates are not required to do an LLM. Unlike the PCLL, which is a basic qualification for entry into traineeship for the legal profession, the LLM is an advanced degree for those who choose to enhance their academic credentials, legal expertise or their earning capacity.

Conclusion: The Faculty's position

The Board of the Faculty of Law, University of Hong Kong, consisting of all teachers in the Faculty, student representatives and representatives from the legal profession, met on 9 March to consider the proposed withdrawal ('the proposal') of UGC funding for the PCLL. After careful consideration and lengthy discussion, the Faculty Board resolved that it strongly opposes the proposal on the following grounds:

- (a) the proposal frustrates the objectives of and pre-empts the outcome of the Government-funded comprehensive review of legal education in Hong Kong (which will include a study of Hong Kong's legal manpower needs and of the system and quality of legal education in Hong Kong) which is currently in the process of being conducted under the auspices of a Steering Committee chaired by the Acting Solicitor General;
- (b) the proposal will have the socially undesirable effect of deterring talented young people from lower-income families from joining the legal profession in Hong Kong in future, which in turn will adversely affect the quality of the legal profession and legal services in Hong Kong;
- (c) the PCLL is an integral part of a 4-year *basic* programme of university legal education the completion of which is a prerequisite for seeking employment as a trainee solicitor and for commencing pupillage as a barrister, and the PCLL (unlike the LLM) is therefore not an *advanced* academic or professional qualification that enhances one's career development within one's profession;
- (d) the proposal will make it difficult for necessary improvements to the PCLL course to be introduced, even if such improvements are recommended as a result of the review mentioned in (a) above;

- (e) the proposal will have a negative impact on legal scholarship and research in Hong Kong, which depends crucially on the existence of a vibrant research culture in strong academic departments within the University;
- (f) as the proposal puts at risk both the quality of legal education and the quality of legal scholarship and research in Hong Kong, it ultimately jeopardizes the maintenance of the Rule of Law in Hong Kong.

Indeed, a strong and independent legal profession is essential to the Rule of Law, particularly at this crucial time in the development of Hong Kong's legal system as a special administrative region of China. Our lawyers face new challenges, including the bilingual legal system and the interface and interaction between the Hong Kong and mainland Chinese legal systems. The maintenance of Hong Kong's prosperity as an international financial and commercial centre, as well as the successful transition of its economy in the age of information technology, also depend crucially on whether it is served by world-class legal practitioners. We must therefore endeavor to strength and develop legal education. Withdrawing public funding for the fourth year of law school would significantly undermine that goal.

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Self-funded Postgraduate Certificate in Laws (P.C.LL.)
Calculated on the basis of 170 students (Full Time Equivalents)

	\$	
<u>Direct Costs</u>		
Staffing - Department of Professional Legal Education	22,711,333	(Note 1)
- Faculty of Law	760,226	(Note 2)
General Expenses/Equipment	500,000	
Total direct costs	<u>23,971,559</u>	
<u>Total Cost</u>		%
Direct costs	23,971,559	80
Indirect overheads	5,992,890	20 (Note 3)
Total cost	<u>29,964,449</u>	<u>100</u>
Tuition fee per student (FTE)	176,261	(Note 4)

Note:

- (1) 100% of existing staff of Department of Professional Legal Education
- (2) 33.3% of existing office staff of Faculty of Law
- (3) Current overhead is 15%, 20% is an estimate only
- (4) Total cost divided by no. of FTEs

Self-funded Postgraduate Certificate in Laws (P.C.LL.)
Calculated on the basis of 335 students (Full Time Equivalents)

	\$	
<u>Direct Costs</u>		
Staffing - Department of Professional Legal Education		
- full-time staff	22,711,333	(Note 1)
- part-time lecturers	1,360,000	
- Faculty of Law staff	1,500,000	(Note 2)
- SPACE staff (1998/99 actual)	1,887,000	(Note 3)
General Expenses/Equipment	985,000	
Total direct costs	<u>28,443,333</u>	
<u>Total Cost</u>		%
Direct costs	28,443,333	80
Indirect overheads	7,110,833	20
Total cost	<u>35,554,166</u>	<u>100</u>
Tuition fee per student (FTE)	106,132	(Note 4)

Note:

- (1) 100% of existing staff of Department of Professional Legal Education
- (2) 66% of existing office staff of Faculty of Law
- (3) No. of students in 1998/99 is 150 FTEs (SPACE only)
- (4) Total cost divided by no. of FTEs

Additional information:

SPACE PCLL Tuition fee for 1999-2000

-F/T \$104,000

-P/T \$54,000